(2) General damages — $21,758.72 to be apportioned on the following basis:

Widow	...	$14,505.82
1st child)		
)	...	$ 7,252.90
2nd child)		

The award in respect of the children is to be deposited in an approved savings bank on trust for the minors.

Order accordingly.

RE SING SING ELECTRICAL WORKS & ORS.' APPLICATIONS

[O.C.J. (B.T.H. Lee J.) July 9, 1971]

[Kuching — Applications for Execution Nos. K. 74 of 1970, K. 76 of 1970, K. 71 of 1970 and K. 62 of 1970]

Practice and Procedure — Execution proceedings — Rateable distribution — Application for — Conditions to be fulfilled — R.S.C. 1957, O. 46, r. 7, O. 46A r. 1.

Practice and Procedure — Applications and proceedings in chambers — Service of summonses, not being originating summons, requiring appearance — R.S.C. 1957, O. 54 r. 4E.

These were applications by three judgment-creditors who claimed for rateable distribution among the applicants and respondent in respect of proceeds realized from the sale of immoveable properties belonging to the judgment-debtor.

These cases had been consolidated and argued as one case falling under the same consideration.

The facts appear sufficiently from the judgment.

Held: (1) the primary condition to be fulfilled by a person claiming to participate in the assets of the judgment-debtor is that he must have had a decree for the payment of money, which has been obtained by him against the same judgment-debtor;

(2) in this case since the applicants had satisfied the above conditions, the order was granted that the assets of the judgment-debtor be rateably distributed among the decree-holders.

Per B.T.H. Lee J.: "As it now stands, the provisions of Order 46A are to my mind simply designed to facilitate the expedient administration of assets of the judgment-debtor.... The object of the order is fairly clear, namely, to prevent multiplicity of execution proceedings, and at the same time to ensure that there was equitable distribution of the assets of the judgment-debtor, among the various decree-holders who have the right to have their decrees satisfied".

Cases referred to:-

(1) *Hoti Lal* v. *Chatura Prasad & Ors.* A.I.R. 1941 All. 110.

(2) *Nathmal* v. *Zindamal Sultanmal* A.I.R. 1951 Ajmer 58.

(3) *Suikeena Katum Sahiba* v. *Mohamed Abdul Aziz* A.I.R. 1916 Mad. 792.

(4) *Imtiaz Ahmad* v. *Ghulam Ali* P.L.D. 1963 S.C. 382. at p. 400.

SUMMONS IN CHAMBERS.

Chong Siew Fai for the applicants.

S. Sahathevan for the respondent.

Cur. Adv. Vult.

B.T.H. Lee J.: These are applications by three judgment-creditors (hereinafter called "the applicants") claiming for rateable distribution among the applicants and respondent in respect of proceeds realised from the sale of Ng Ah Khin's immoveable properties. the judgment-debtor in this case.

These cases have been consolidated and have been argued as one case falling under the same consideration.

Briefly, the facts are as follows:—

On October 10th, 1970, the judgment-debtor's lands were sold by public auction for a sum of $8,211.00.

On October 19th, 1970, the applicants wrote to the sheriff claiming rateable distribution of the assets in the hands of the court.

On November 9th, 1970, Eng Khiong Furniture & Woodworking Factory (judgment-creditor No. 4) (hereinafter called "the respondent") applied for payment out of the assets and the application came on for hearing in chambers on December 4th, 1970.

On November 16th, 1970, the sheriff directed the applicants to take steps to appear before the judge in chambers on that date fixed for hearing and claim for rateable distribution.

Affidavits were filed by the applicants on December 3rd, 1970 and copies thereof were delivered to counsel for the respondent on the same day.

Formal applications for rateable distribution by way of summons in chambers were duly filed and copies thereof served on counsel for the respondent.

An objection was taken by counsel for the respondent that the formal applications by way of summons in chambers were bad for non-compliance with the provisions of Order 54 rule 4E.

The affidavits filed on December 3rd were not delivered to counsel for the respondent as required by the rule which requires two clear days.

The affidavits were delivered on December 3rd, *i.e.* one day before the hearing of the application in chambers of the counsel for the respondent for payment out.

It was on this issue that the court adjourned the matter into open court for argument.

It is convenient at the outset to set out the relevant portion of Order 46A which is in the following terms:

"Proceeds of execution sale to be distributed rateably among judgment-creditors.

1. (1) Where assets are realised by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realisation, attached the property from which such assets have been realised in execution of orders or judgments for the payment of money against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be distributed rateably among all such persons ...."

Order 46 rule 7, so far as is material, provides as follows:

"Payment by sheriff to execution creditor.

7. Subject to the provisions of Order 46A... the sheriff shall, at the expiration of fourteen days after the execution of sale of any writ of seizure and sale, pay to the execution creditor the balance of the proceeds of sale in his hands (after deduction of his fees, commission and expenses) or so much thereof as is necessary to satisfy the judgment in respect of which execution was issued."

It is to be observed that our Order 46A is modelled on section 73 of the Indian Civil Procedure Code.

On an examination of the above provisions it becomes clear that the primary condition to be fulfilled by a person claiming to participate in the assets of the judgment-debtor, is that he must have had a decree for the payment of money, which has been obtained by him against the same judgment-debtor.

It is, however, conceded before the court on behalf of counsel for the respondent that the applicants have each of them satisfied the above conditions.

Thereupon it becomes the duty of the court by which the assets are held, to allow the decree-holders to participate in the distribution equally with the decree-holders who obtained the decrees against the judgment-debtor upon which the execution proceedings are instituted.

The object of the Order is fairly clear, namely, to prevent multiplicity of execution proceedings and at the same time to ensure that there was equitable distribution of the assets of the judgment-debtor among the various decree-holders who have the right to have their decrees satisfied.

As it now stands the provisions of Order 46A are to my mind simply designed to facilitate the expedient administration of assets of the judgment-debtor.

It is, therefore, apparent that the point of procedure raised by counsel for the respondent is a mere technical point devoid of merit.

I will refer to the brief passage in the judgment of *Hoti Lal* v. *Chatura Prasad and Others*[1] where it says:

"It cannot be disputed that section 73 enacts a mere rule of procedure and not a rule of substantive law."

It is perhaps convenient to refer to *Chitaley & Rao* in their commentary in regard to the scope and object of the provisions of the law as set out in section 73, Civil Procedure Code, on the question of priority and application:—

"Under sections 270 and 271 of the Code of 1859 which corresponded to the present section 73, the creditor who first attached the property had a statutory priority to have his claim satisfied in full out of the sale proceeds to the exclusion of other creditors. This superior position assigned to the first attaching creditor naturally led to scrambles and malpractices among attaching creditors, and, with a view to put an end to the same, the section was changed by the Code of 1877 so as to place all decree-holders on an equal footing regardless of any priority in attachment or of the application for rateable distribution."

(See *Nathmal* v. *Zindamal Sultanmal*[2]).

So also in *Suikeena Katum Sahiba* v. *Mohamed Abdul Aziz*[3] it was decided that an application for execution of a decree did not give priority by virtue of attachment by a creditor and that the fund in a court which was attached was distributable on the principle followed by a court in the administration of assets of a deceased person, that is to say, rateably amongst the creditors who put in claims thereto.

The court has been referred to a passage in *Mallal's* Supreme Court Practice, Volume 1, at page 641 under the heading "English and Local Procedure" where Dr. Bashir A. Mallal observed:

"When the local law has been modelled on that of India, Indian decisions are important. *Leonard* v. *Nachiappa Chetty* (1923) 4 F.M.S.L.R. 265".

Finally, I come to the question of procedural technicalities where the learned editor of *The Malayan Law Journal* has this to say at page lxiii of [1969] 2 M.L.J.:

"While the lawyers in England have improved their own machinery of procedure we still continue to use their old procedure. It is time that a serious look should be taken at our rules of procedure so that in the words of Ismail Khan J., as he then was, in *Ee Kim Kin* v. *Collector of Land Revenue, Alor Gajah*, [1967] 2 M.L.J. 89: 'Rules of procedure should be the hand-maiden not the master'. We may be pardoned for repeating what Kaikaus J. said in *Imtiaz Ahmad* v. *Ghulam Ali*[4] at page 400 [noted at [1963] M.L.J lxii]:

'... I think the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. The English system of administration of justice on which our own is based may be to a certain extent technical but we are not to take from that system its defects. Any system which by giving to the form and not to the substance defeats substantive rights is defective to that extent. The ideal must always be a system that gives to every person what is his'."

I therefore make the order as asked for in terms of the summons in chambers, *i.e.* the assets of the judgment-debtor be rateably distributed among the decree-holders.

Order accordingly.

RE COLISEUM STAND CAR SERVICE LTD. ABDUL KHALIK v. MOHAMED JEE & ORS.

[O.C.J. (Abdul Hamid J.) August 21, 1971]

[Kuala Lumpur — Originating Motion No. 9 of 1967]

Companies — Oppression of minorities — Conduct of affairs of company — Court's power to regulate — Companies Act, 1965, s. 181(1) and (2).

Practice and Procedure — Application under Companies Act, 1965, s. 181 — Whether by way of originating motion or petition — Nature of relief sought — Necessity to state in clear terms.

An application under section 181 of the Companies Act may be proceeded by way of originating motion. Such an application must state the nature of the relief sought and satisfy the court that the applicant is entitled to that relief.